

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3452 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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CHATRASINHG M MAHIDA

Versus

STATE OF GUJARAT

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Appearance:

MR BC DAVE FOR (MR PB MAJMUDAR) for Petitioners

MR BY MANKAD ADDL PUBLIC PROSECUTOR for Respondent No. 1

MR TRILOK J PATEL for Respondent No. 2

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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 28/10/1999

ORAL JUDGEMENT

#. Heard Mr.B.C.Dave, learned counsel appearing for the petitioner, Mr.B.Y.Mankad, learned APP for respondent no.1 State and Mr.Trilok Patel for the original complainant - respondent No.2. The petitioner has prayed for quashing the criminal complaint lodged in Makkerpura Police Station, Vadodara City bearing C.R.No.I/378 / 1997

on the complain of one Urmilaben - wife of Ambalal Lallubhai Parmar on 22nd August 1997. According to the complainant, all the petitioners had gone to the house of the complainant on 22nd June 1991 at about 9.00 p.m. and she was abused and a terror was created. The complainant was dragged into a room and gang rape was committed. It is the say of the complainant that in presence of the petitioner No.1 - Chatrasingh M. Mahida, his three nephews i.e. petitioner No.2 to 4 had committed rape on complainant - Urmilaben. It is also contended that her residential house was forcibly taken away by these accused persons. It is also the case of the prosecution that the complainant was also raped on 23rd and 24th June, 1991. The petitioner No.1 being the influential and is a head strong man, it was not possible for her to come out with the complaint so delay has caused in lodging FIR in the police station. I have carefully gone through the alleged incident narrated by the complainant in FIR. Prima facie, it gives impression that a great terror must have been created by the accused persons on the day of incident but on careful scrutiny of the fact and on posing various necessary questions which crop up, after perusal of the papers available on record, I am satisfied that the submission of Mr.Dave that a case of the prosecution is exfacie improbable. Mr.Dave has rightly placed his reliance on the case STATE OF HARYANA VS. BHAJAN LAL reported in AIR 1992 SUPREME COURT 604. The documents available on record indicates that the petitioner No.1 is active in public life and has enjoyed various public posts as an active worker of Congress Party and even today he is the District Secretary of Congress Party for District : Vadodara. To hold certain public post is not a qualification to a person and it is experience of this Country that anybody, if he is capable manager, can occupy some public chair. But the fact that the complaint is lodged practically after the period of 6 years, itself indicates many things. It is not the say of the other side that there were no complaints from the year 1991 to 1997 against the petitioner no.1 or any of the petitioners. I agree that a head strong man may not be named before the police under the apprehension that the complainant or supporters of the complainant might be put to big disadvantage. In case of petitioner No.1, several complaints were filed. I am also told that he was detained under PASA in the year 1997 & 1998 but the detention order passed by the detaining authority were turned down by this Court. It is possible that the personality of the petitioner No.1 may be controversial personality. But this aspect cannot be considered by this Court and Court is bound to appreciate the case of the prosecution as pleaded in the case on hand. I would

like to refer the relevant observation in headnote para of BHAJANLAL'S CASE (SUPRA) which is important for the purpose;

"in following categories of cases, the High Court may in exercise of powers under Article 226 or under S.482 of CrPC may interfere in proceedings relating to cognizable offences to prevent abuse of the process of any Court or otherwise to secure the ends of justice. However, power should be exercised sparingly and that too in the rarest of rare cases.

1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2) xx xx xx xx

3) xx xx xx xx

4) xx xx xx xx

5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6) xx xx xx xx

7) Where a criminal proceedings is manifestly attended with mala fide and / or where the proceedings is maliciously instituted with an ulterior motive for wreaking vengeance or the accused and with a view to spite him due to private and personal grudge.

Where allegations in the complaint did constitute a cognizable offence justifying registration of a case and investigation thereon and did not fall in any of the categories of cases enumerated above, calling for exercise of extraordinary powers or inherent powers, quashing of FIR was not justified.

#. The husband of complainant has not filed any complaint. It is not even the say of the complainant

that she or her husband had tried to seek help of any social organization but there was no response at that relevant point of time when the offence was committed. The facts stated in declaratory pursis dated 1st October, 1999 filed by the learned advocate appearing for the petitioner indicates that all the petitioners are married and are having happy marriage life. The petitioner No.1, today is of 50 years of age so on the alleged date of incident, he must be around 43 / 44 years of age. He being the real maternal uncle of the petitioners No.2, 3 & 4 whether, the young nephews of petitioner No.1 would commit rape on a lady who was having young daughter of 22 years of age is the question. Without passing any comments on merits, I am satisfied that there are more than one inherent improbabilities in the complaint filed by the complainant - Urmilaben. My attention is also drawn by the learned counsel appearing for the petitioner to the fact that on the point of improbability and delay one serious complaint was lodged against the petitioner No.1 in Makkerpura Police Station on 24-10-1994 is turned down by this Court under Section 482 of CrPC vide order dated 4th March, 1999. While disposing the Criminal Miscellaneous Application No ; 3448 of 1998 (Coram : R.P.Dholakia, J.). In that case, the complaint was lodged in the year 1994 but the offence was registered in the year 1997 but here in the case on hand, the alleged offence was committed in the year 1991 and the complaint is lodged in the year 1997. The year of complaint in both these cases registered by the police is relevant. Merely because allegations in the complaint are serious, the accused should not be forced to face the trial. Mr.Dave has rightly relied upon the case reported in PEPSI INDIA LIMITED 1998 SCC (Criminal) page 1400, wherein, the Hon'ble Apex Court has observed that even after filing of the chargesheet, the inherent powers under Section 482 of CrPC can be exercised by the High Court.

#. It is argued by the learned APP Mr.Mankad and Mr.Trilok Patel that the police has filed chargesheet against the petitioners and therefore, they should be asked to appear before the learned Sessions Judge and they should avail appropriate remedy under Section 227 and 228 of the CrPC and should pray for discharge. According to them, this is not the case wherein, the inherent powers should be exercised by this Honourable Court and the accused should be asked to undergo the procedure engrafted in the Code of Criminal Procedure. But looking to the ratio of the above two judgments and the facts that one such complaint against the petitioner No.1 and other accused persons is turned down by this

Court as referred to hereinabove, I am inclined to allow this petition as prayed for. The sickness of the petitioner No.1 is brought to the notice of this Court but the said fact is not important because these papers are of the year 1996, 1997 and 1998 which were not relevant on the day of alleged incident, so I am not inclined to discuss that part of the submission advanced by Mr.B.C.Dave. No further discussions is required.

#. In light of the discussions hereinabove, the Rule issued earlier is hereby made absolute. The ad interim relief is also made absolute. The complaint lodged in Makkerpura Police Station vide C.R. No : I 378/ 97 and criminal proceedings initiated on the strength of the said complaint which are pending before the learned Sessions Court, Vadodara as Sessions Case No : 28/98 are quashed and set aside. Rule is made absolute accordingly.

Date : 28-10-1999 [C.K.Buch, J.]

#kailash#